

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICAH K. WELLMAN,

Plaintiff,

vs.

DEPARTMENT OF JUSTICE, BUREAU OF  
 ALCOHOL, TOBACCO, FIREARMS AND  
 EXPLOSIVES,

Defendant.

3:14-cv-00348-MMD-WGC

**ORDER**

**re: Doc. # 7**

Before the court is Plaintiff's Motion for Entry of Default Final Judgment. (Doc. # 7).<sup>1</sup> Plaintiff states defendant Bureau of Alcohol, Tobacco, Firearm and Explosives was served with the complaint on July 15, 2014, and that "more than thirty days have passed and the defendant has failed to plead or otherwise defend this action, and the plaintiff is entitled to judgment by default against the defendant."

Plaintiff actually has two arguments about his request for entry of a default judgment. One is that an extended period of time has passed subsequent to Plaintiff making a FOIA request to the Defendant (id., at 4-5). Secondly, Plaintiff states more than thirty (30) day has passed since he effected service of the complaint. A return on a summons was previously filed with the court reflecting service on the Defendant on or about July 15, 2014. (Doc. # 6).

Plaintiff is confusing the alleged obligation of the Defendant to respond to a FOIA request versus the obligation of the government to appear and defend in this action. In that regard, as was reflected in the summons issued in this matter to the Defendant (Doc. # 2), the United States or one of its agencies has sixty (60) days to respond to the complaint. Therefore, Plaintiff's motion is premature. An entry of a default - which is a precondition to the entry of a default judgment (*Devlin v Kalm*, 493 Fed. Appx.

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<sup>1</sup> Refers to court's docket number.

1 678, 685-86 (6th Cir. 2012) - is only appropriate if a party fails to plead or to otherwise defend the  
2 action. Inasmuch as the time for the government to respond has not yet expired, it would be  
3 inappropriate to enter a default. As noted above, absent a default, no default judgment may be entered.

4 Plaintiff's motion (Doc. # 7) is therefore **DENIED**.

5 IT IS SO ORDERED.

6 DATED: August 25, 2014.

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WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE